

RESOLUTION NO. 22-150

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A First Amendment To The Professional Services Contract With Kidango, Inc. To Reduce The Services Provided Due To A Significant Increase In The Cost Of Food For Daily Meal Service As A Result Of A Significant Increase In The Rate Of Inflation Since The Contract Was Executed

WHEREAS, the City of Emeryville provides childcare services at the Emeryville Child Development Center ("Center"), located at 1220 53rd Street, Emeryville, California; and

WHEREAS, the City desires to provide a meal program for the children enrolled at the Center; and

WHEREAS, the Center is required to provide meals to all participants as part of the program and as a requirement for receiving funding from the State of California; and

WHEREAS, the City and Contractor entered into a Professional Services Contract dated June 29, 2022 ("Contract") with Kidango, Inc. to provide daily meal service at the Center; and

WHEREAS, due to a significant increase in the cost of food for daily meal service as a result of a significant increase in the rate of inflation since the Contract was executed, Kidango, Inc. notified City staff that it would no longer be able to provide food service for the program for the amount set forth under the contract, and requested a price increase from \$6.32 to \$9.20 per day for breakfast, snack, and lunch service; and

WHEREAS, City staff contacted the other vendor who submitted a bid proposal for this Contract and that proposer indicated it would be unable to honor its original price submission also due to rising food costs and inflation and would only be able to offer lunch service at an even higher rate than the amount requested by Kidango, Inc.; and

WHEREAS, the City and Contractor desire to enter into a First Amendment to the Contract for the purpose of reducing the services provided by the Contractor as set forth in Exhibit A-1.

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to enter into a First Amendment to the Professional Services Contract with Kidango, Inc. to reduce the services provided.

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First Amendment Professional Services Contract, Kidango, Inc.
City Council Meeting | November 15, 2022
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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, November 15, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez, and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:
John Bauters
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MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:
April Richardson
9AF9F67CE0264D8...
CITY CLERK

DocuSigned by:
Christie Crowl, as Acting City Attorney
5F6E58613741458...
LEGAL COUNSEL



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT

("Amendment") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **KIDANGO, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated June 29, 2022 ("Contract") for the purpose of retaining the services of Contractor to provide daily meal service for children at the Emeryville Childhood Development Center ("**Center**"); and

WHEREAS, due to a significant increase in the cost of food for daily meal service as a result of a significant increase in the rate of inflation since the Contract was executed, the Contractor requested that the City agree to decrease the food service Contractor will provide to only lunch at a higher cost then originally agreed to; and

WHEREAS, City staff contacted the other proposer who submitted a bid for this Contract and that proposer was not able to provide these services at a lower cost; and

WHEREAS, the City and Contractor desire to enter into a First Amendment to the Contract on November 1, 2022, for the purpose of reducing the services provided by the Contractor as set forth in Exhibit A-1.

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-***Revision Number*;

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

City of Emeryville | Professional Services Contract Amendment
REV 06/2020

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- ☐ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **NEW END DATE**.

1.3 Total Compensation Amount

- ☐ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

SIGNATURES ON FOLLOWING PAGE

6. SIGNATURE PAGE TO PROFESSESIONAL SERVICES CONTRACT
FIRST AMENDMENT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,
which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
John Kennedy
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City Attorney

Dated: CITY OF EMERYVILLE

City Manager

Dated: KIDANGO, INC.
DocuSigned by:
Noah Delos Santos (Signature)
C7303F02312D475...

Noah Delos Santos, Director of Nutrition

Attach: W-9 Form	Attach: Business License Certificate	Attach: Insurance Certificate and Endorsements

EXHIBIT A-1: REVISED SERVICES 2022-2023

Background:

Due to the rising food costs and inflation, Kidango has requested a price increase from \$6.32 per day for breakfast, snack, and lunch service to \$9.20 per day.

Following discussions with the City, Kidango will reduce its services under the Contract to lunch only, including milk, for the cost of \$5.22 per day.

Contractor Responsibilities:

Key Personnel:

Noah Delos Santos, Director of Nutrition

Meal Service:

1. Contractor will provide daily meal service to children at the Emeryville Childhood Development Center ("**Center**"), Monday through Friday, excluding City holidays. Daily meal service will consist of lunch. Menus will be designed for preschool children aged 1 year to 5 years old. Each meal will include fresh fruit and/or fresh vegetables. Each meal will include low fat or nonfat white milk.
2. Contractor will provide meals for children with special dietary needs as requested by City. All such meals shall otherwise meet the meal pattern and nutritional requirements for non-special dietary needs meals.
3. Contractor will provide sack lunches for field trips as requested by City. All meals for field trips shall meet the meal pattern and nutritional requirements for meals served at the Center.
4. Contractor will deliver meals to the Center at times specified by City. Contractor will be responsible for proper storage and care of meals until delivery to the Center. Contractor shall ensure that all health and sanitation requirements of the California Retail Food Code (Health and Safety Code section 113700 et. seq.) are met at all times.

Food Standards:

Contractor will provide food which emphasizes fresh and all-natural ingredients, and will not provide overly processed, fried, or microwaved product meals. Ingredients will be organic and locally produced whenever possible. All milk must be free of BST growth hormone. Meats shall be free of nitrates and nitrites.

Contractor will not provide food: high in fructose corn syrup, or added sugar; with artificial trans fats; or with artificial colors, flavors or sweeteners.

Menus:

No later than one week prior to the end of each month, Contractor will provide to City a proposed menu for the following month for all meals describing meals to be served for the that month. The menu will be subject to approval by City.

Records:

Meals will comply with all nutritional requirements of the state Child and Adult Care Food Program (“CACFP”). Contractor will maintain all necessary records on the nutritional components and quantities of the meals served at Center and make said records available for inspection by State and Federal authorities upon request. Contractor will maintain said records for a period of three (3) years.

Upon execution of this Agreement, Contractor will provide City with a copy of current health certifications for the food service facility in which it prepares meals for use in the CACFP.

City Responsibilities:

Food Storage Facilities:

City will provide refrigerated food storage equipment. Contractor will provide hot food storage equipment. City will provide maintenance of the premises, equipment and facilities where meals will be served.

Ordering and Service of Meals:

City will conduct weekly ordering of the number of meals needed for each day of the following week.

City will provide for service of meals to children.

Meal Pricing:

Pricing for meals and services provided in this Agreement shall be as follows:

Meal Type	Pricing (per day / per child)
Lunch	\$5.22

The yearly contract amount is based on:

247 days of operation x \$5.22 per day x 56 participants = \$72,203.04 for a total not to exceed \$80,000 per fiscal year.